

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

Criminal Action
No. 21-cr-10045-ADB

6 v.

September 12, 2022

7 PEPO HERD EL,

8 Defendant.

Pages 1 to 8

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13 TRANSCRIPT OF STATUS CONFERENCE VIA TELEPHONE
14 BEFORE THE HONORABLE ALLISON D. BURROUGHS
15 UNITED STATES DISTRICT COURT
16 JOHN J. MOAKLEY U.S. COURTHOUSE
17 ONE COURTHOUSE WAY
18 BOSTON, MASSACHUSETTS 02210
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22 JOAN M. DALY, RMR, CRR
23 Official Court Reporter
24 John J. Moakley U.S. Courthouse
25 One Courthouse Way, Room 5507
Boston, Massachusetts 02210
joanmdaly62@gmail.com

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APPEARANCES:

FOR THE GOVERNMENT:

AMANDA BECK
BEN TOLKOFF
Assistant U.S. Attorney
U.S. Attorney's Office
John J. Moakley Courthouse
Suite 920
One Courthouse Way
Boston, Massachusetts 02210
617.748.3144

FOR THE DEFENDANT:

JULIE-ANN OLSON
Office of the Federal Public Defender
51 Sleeper Street
Boston, Massachusetts 02110
617.223.8061

P R O C E E D I N G S

(The following proceedings were held via telephone before the Honorable Allison D. Burroughs, United States Magistrate Judge, United States District Court, District of Massachusetts, on September 12, 2022.)

THE CLERK: This is criminal matter 21-10045, United States versus Pepo Herd El. Will counsel identify yourselves for the record.

MS. BECK: Good morning, Your Honor. Amanda Beck for the United States and Ben Tolkoff as well.

MS. OLSON: Good morning, Your Honor. Julie-Ann Olson for defendant Pepo Herd El.

THE COURT: We're on for a status conference today. I've read the status reports from the government, and I've read the competency report as well. I see the government's intention is to have him forcibly medicated.

MS. BECK: Yes, Your Honor.

THE COURT: Ms. Olson, what is your position?

MR. NAGLE: I have not yet connected with Mr. Herd El about it. I've sent him the report. We've tried to speak in person. As Your Honor recalls, Mr. Herd El's position is that I don't represent him. I do expect, however, without having directly heard from him that he will be very opposed to forced medication. That's been his prior position. I just need a little more time to communicate with him about

1 what that might mean and what his options are.

2 THE COURT: If he's not forcibly medicated, he's
3 going to be held. Does he get that? I know I'm sure it's
4 hard to communicate with him. Does he have any appreciation
5 of that?

6 MS. OLSON: I wouldn't be in a position to
7 accurately say, Your Honor. It's a difficult position. I
8 think he understands that.

9 THE COURT: All right. I haven't done a ton of
10 cases in this posture. As far as I know there's not other
11 options. He's either restored to competency or held. Am I
12 right, Ms. Beck?

13 MS. BECK: Your Honor, I confess I haven't done one
14 of these cases before. That's my understanding at the
15 moment. I need to do more research on how we proceed with a
16 Sel hearing, if there are any other options. The
17 government's position is the defendant needs to be detained
18 until he's convicted or feeling better at a minimum.

19 THE COURT: Nicely said, Ms. Beck.

20 MS. OLSON: Your Honor, Julie Olson again. I do
21 believe that he's entitled to a hearing on release when not
22 competent because the issue of whether he's a danger to
23 himself or others at some point, but I think we're just not
24 there yet anyway. I need to speak with him and find out his
25 position. Of course if the government will --

1 THE COURT: I'm not going to totally prejudge it,
2 but I have read everything that's been filed in this case so
3 far, and the charge is felon in possession of a firearm. I'm
4 sure you all know I take a pretty hard line on the firearm
5 offenses because of the risk they pose to the public. I
6 won't prejudge at this point. You may tell him there's no
7 reason to be optimistic.

8 MS. OLSON: Understood.

9 THE COURT: Do you want them to hold on filing the
10 motion? Do you want them to file the motion and you want
11 some time? Do you want to talk about it first?

12 MS. OLSON: I'd like to talk to him about it first
13 and then go from there. I don't think I need more than 30
14 days to try to coordinate a call, presuming he cooperates and
15 he's willing to speak with me.

16 THE COURT: I'm not going to put it in a stay
17 order, but we'll effectively stay the case for 30 days.
18 We'll have a status in 30 days. If he hasn't been amenable
19 to being medicated at that point, the government will file
20 its motion. Does that make sense?

21 MS. BECK: This is Amanda Beck, yes. Thank you
22 Your Honor.

23 THE COURT: Karen, can we give them a date in 30
24 days?

25 THE CLERK: How about 9 a.m. on October 13?

1 MS. BECK: I should be on trial that week. So I
2 should say that's not good. Right now it's expected to go.

3 THE COURT: I'm on trial that week, too. That's
4 why I'm scheduling these things for 9. I schedule around my
5 trial. Do you have a 9 to 1 schedule?

6 MS. BECK: It's with Judge Casper. So I don't
7 know.

8 THE COURT: How about the afternoon slot or a
9 different week. Either one is fine with me.

10 THE CLERK: How about 9 a.m. on the 20th?

11 MS. OLSON: I can do that.

12 MS. BECK: I can do that for the government.

13 THE COURT: So we'll go with that. You two should
14 keep thinking or three should be talking amongst yourselves.
15 If he's adamant against forcible medication, the government
16 can go ahead and file its motion in advance of the status.
17 Just work it out between yourselves and we'll have an update
18 on the 20th. Okay?

19 MS. BECK: Thank you.

20 MS. OLSON: Thank you, Your Honor.

21 THE COURT: Anything else for today?

22 MR. TOLKOFF: Your Honor, Ben Tolkoff here. Just
23 for the record I'd ask that the time between today and the
24 20th of October be excluded. It's statutorily excluded
25 because Mr. Herd El is currently not competent. I wanted to

1 make a record of it.

2 THE COURT: Karen, let's exclude the time to the
3 20th, please.

4 THE CLERK: Okay.

5 THE COURT: I take it you're not opposed to that?
6 It is statutorily required.

7 MS. OLSON: Because it's statutorily required.
8 Mr. Herd El is opposed, but I understand the statutory
9 requirement.

10 THE COURT: Okay. Karen, let's go ahead and
11 exclude the time.

12 THE CLERK: Okay.

13 THE COURT: Okay. Thanks, everyone. Case is
14 recessed.

15 (Court recessed at 9:10 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Joan M. Daly

February 17, 2023

Joan M. Daly, RMR, CRR
Official Court Reporter

Date